IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9285 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDRA ICHCHHASHANKAR & 1 - Petitioner(s)

Versus

CHAIRMAN, - Respondent(s)

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Appearance :

MR KV GADHIA for Petitioner(s) : 1 - 2.
MR RC PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/02/2006

ORAL JUDGMENT

1. The petitioners have filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the award dated 17.6.1993 passed by the Presiding

Officer of the Labour Court, Bhavnagar in Ref. (LCB) No.339/1987 whereby the termination order passed by the respondent Nagarpanchayat was confirmed and reference filed there against was dismissed. The learned Labour Judge has held that the statement of claim was not signed by the workmen and hence the reference was not maintainable at law. Regarding merits, the learned Labour Judge has observed that the petitioners were daily rated workmen and hence provisions of notice, notice pay or compensation are not applicable. The learned Labour Judge has further observed that under Rule-81 and 82, the seniority list of daily rated workmen is not to be maintained.

2. It is the case of the petitioners that the main ground on which the award of the Labour Court was challenged in this petition was that the Labour Court has erred in holding that the

reference is not maintainable as the statement of claims was not signed by the petitioners workmen. The Industrial Dispute was raised by the Union and the address of the workmen was also not mentioned in each and every correspondence. The Labour Court has also noticed that the matter was referred to him with the address of the Union itself. So that the said reference is sponsored by the Union and hence there was no statement of claims signed by the Union. It is further stated that Rule-4(b)(i) of the Industrial Disputes (Gujarat) Rules, 1966 provides that the Secretary of the Union can sign the statement of claims. It is further stated that this is a welfare legislature and the Labour Court should not be so technical to hear such type of objections. It is further stated that the respondent has terminated the services of the workmen without any reason. It is further

stated that the termination was nothing but 'Retrenchment' as defined under Section 2(oo) of the Industrial Disputes Act, 1947. The respondent has retrenched the workmen on 15.2.1985. Section-25G provides for 'Procedure for retrenchment' and as per Section 25G the employer has to observe Rule 'last come first go' and panchayat has violated Section 25G. Section 25H provide for 'reemployment of retrenched workman'. The said provision was also not complied with. It is further stated that the respondent panchayat is bound to maintain a seniority list under Rule-81 and admittedly in this case the respondent panchayat has not maintained the seniority list. The termination of the petitioners was, therefore, absolutely illegal and unlawful and learned Presiding Labour Judge of the Labour Court has erroneously rejected the reference of the petitioners.

3. An affidavit in reply was filed on behalf of the respondent, wherein it is stated that the petitioners have suppressed material facts that they being daily wagers, they have not reported for duty daily and regularly at the master station and when re-engagement call Ex.64 was served, they have neglected to report for duty. Moreover, when advertisement Ex.39, 40 and 41 were published for regular appointment/recruitment, the petitioners have failed to apply and, therefore, they cannot make any grievance regarding selection of new candidates. Moreover, the petitioners have made false statement in the Statement of Claim, as well as in the deposition that they have worked about one and half years continuously. As a matter of fact, they have worked for about 4 months only looking to the attendance register and salary register produced before

the Labour Court. It is further stated therein that the Labour Court has recorded oral evidence of both the parties and has also considered the documentary evidence given by both the parties and after totality of assessment of evidence the Labour Court has rightly passed the impugned order of rejecting the reference and, therefore, the findings given by the Labour Court are not required to be interfered with in a petition filed under Article 227 of the Constitution of India and, therefore, the petition deserves to be dismissed. It is further stated that the petitioner No.1 had applied on 23.10.1984 to be engaged as daily wager Naka Karkun and he had been recruited as such as stop gap arrangement for 24.10.1984 to 15.2.1985. The petitioner No.2 had applied to be engaged as daily wager Naka Karkun on 17.10.1984 and he had been recruited as such for 3.11.1984 during the stop

gap arrangement and, therefore, in view of the provision of Section 2(oo)(bb)of the Industrial Disputes Act, 1947, there is no retrenchment at all and, therefore, the question of compliance of Section 25H of the Industrial Disputes Act, 1947, does not arise. Moreover, when the petitioners themselves have not reported for duty daily at the muster station and on re-engagement vide Ex.64, not reported for duty and admittedly not applied at the time of regular selection though applications were invited by publishing advertisement at Ex.39, 40 and 41, question of compliance of Section 25G also does not arise. It is, therefore, submitted that the question of issuance of prior notice nor payment of any compensation for illegal termination does not arise at all. Lastly it is submitted that the award of the Labour Court is required to be confirmed as there is no gross palpable, apparent error on

the face of the record which requires to be interfered with in a petition filed under Article 227 of the Constitution of India and, therefore, the petition deserves to be dismissed.

4. After having considered submissions made on behalf of the respective parties and after having gone through the memo of petition, as well as affidavit in reply and the award of the Labour Court, the Court is of the view that the Labour Court has considered the relevant documents as well as oral and written evidence and arrived at the just and appropriate conclusion. The Labour Court has in terms held that the petitioners workmen have not completed 240 days and that they were simply daily wagers and cannot claim any benefits of permanent employees. The Court is not convinced to exercise its discretion under Article-227 and

hence the relief claimed in this petition is not granted. The petition is accordingly dismissed. Rule is discharged with no order as to cost.

(K. A. PUJ, J.)

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